

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

David A. Perlson (Bar No. 209502)

3 davidperlson@quinnemanuel.com

Melissa Baily (Bar No. 237649)

4 melissabaily@quinnemanuel.com

John Neukom (Bar No. 275887)

5 johnneukom@quinnemanuel.com

Jordan Jaffe (Bar No. 254886)

6 jordanjaffe@quinnemanuel.com

50 California Street, 22nd Floor

7 San Francisco, California 94111-4788

Telephone: (415) 875-6600

8 Facsimile: (415) 875-6700

9 Attorneys for WAYMO LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

12 WAYMO LLC,

13 Plaintiff,

14 vs.

15 UBER TECHNOLOGIES, INC.;
16 OTTOMOTTO LLC; OTTO TRUCKING
LLC,

17 Defendants.

CASE NO. 3:17-cv-00939-WHA

**PLAINTIFF WAYMO LLC'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL ITS OFFER OF PROOF
REGARDING ADMISSIBILITY OF
CERTAIN MARKET AND FINANCIAL
INFORMATION**

Pursuant to Civil L.R. 7-11 and 79-5, Plaintiff Waymo LLC (“Waymo”) respectfully requests to file under seal portions of exhibits to its Offer of Proof Regarding Admissibility of Certain Market and Financial Information. (“Waymo’s Offer of Proof”). Specifically, Waymo requests an order granting leave to file under seal the portions of the documents as listed below:

Document	Portions to Be Filed Under Seal	Designating Party
Waymo’s Offer of Proof	Highlighted in blue	Defendants
	Highlighted in green	Waymo
Exhibit 1 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 2 to Waymo’s Offer of Proof	Entire document	Waymo
Exhibit 3 to Waymo’s Offer of Proof	Entire document	Waymo
Exhibit 4 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 5 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 6 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 7 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 8 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 9 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 10 to Waymo’s Offer of Proof	Entire document	Defendants
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Exhibit 15 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 16 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 17 to Waymo’s Offer of Proof	Entire document	Defendants
Exhibit 18 to Waymo’s Offer of Proof	Entire document	Defendants

Exhibit 19 to Waymo's Offer of Proof	Entire document	Defendants
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I. LEGAL STANDARD

Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.* In the context of non-dispositive motions, materials may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1135, 1138 (9th Cir. 2003)).

II. DEFENDANTS' CONFIDENTIAL INFORMATION

Waymo seeks to seal identified portions of these documents because Defendants have designated the information confidential and/or highly confidential. Declaration of Lindsay Cooper (“Cooper Decl.”) ¶ 3. Waymo takes no position on the merits of sealing the designated material, and expects Defendants to file one or more declarations in accordance with the Local Rules.

III. THE COURT SHOULD SEAL WAYMO'S CONFIDENTIAL INFORMATION

The Court should seal the portions of Waymo's Offer of Proof and attached Exhibits as identified by Waymo in the table above. Waymo seeks to file this information under seal because it discloses Waymo's confidential business information, including descriptions of internal Waymo documents discussing Waymo's market and competitive analyses, plans, forecasts, and financial information. *See* Cooper Decl. ¶ 4. Confidential business information that, if released, may “harm a litigant's competitive standing,” merits sealing. *See Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598-99 (1978). Waymo seeks to seal confidential business information that fits squarely within this category because it contains Waymo's future plans with respect to commercializing its business, including launch dates and launch locations; Waymo's internal strategic analysis of the TaaS market and how to enter it; Waymo's analysis of the potential future revenue and profits associated with

1 various business plans; and strategic ways to deal with competitors in the market, including Uber and
2 others. Cooper Decl. ¶ 4. The disclosure of Waymo's confidential business information would harm
3 Waymo. Cooper Decl. ¶ 4. Waymo has narrowly tailored its requests to only information meriting
4 sealing. *Id.* Moreover, the scope of information that Waymo is seeking to seal is consistent with other
5 administrative motions to seal that have already been granted by the Court in this case. (*See e.g.* Dkt.
6 1048.) Thus, the Court should grant Waymo's administrative motion to seal.

7 **IV. CONCLUSION**

8 In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of the
9 above listed documents accompany this Administrative Motion. For the foregoing reasons,
10 Waymo respectfully requests that the Court grant Waymo's administrative motion to file under
11 seal.

12
13 DATED: January 26, 2018

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

14
15 By /s/ Charles Verhoeven

Charles Verhoeven
Attorneys for WAYMO LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

CASE NO. 3:17-cv-00939-WHA

**[PROPOSED] ORDER GRANTING
PLAINTIFF WAYMO LLC'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL ITS OFFER OF PROOF
REGARDING ADMISSIBILITY OF
CERTAIN MARKET AND FINANCIAL
INFORMATION**

1 Plaintiff Waymo LLC (“Waymo”) has filed an Administrative Motion to File Under Seal
 2 (“Waymo’s Administrative Motion”) certain information in its Offer of Proof Regarding
 3 Admissibility of Certain Market and Financial Information (“Waymo’s Offer”).

4 Having considered Waymo’s Administrative Motion, and good cause to seal having been
 5 shown, the Court **GRANTS** Waymo’s Administrative Motion and **ORDERS** sealed the
 6 documents listed below:

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Waymo’s Offer of Proof	Highlighted in blue
	Highlighted in green
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Exhibit 15 to Waymo’s Offer of Proof	Entire document
Exhibit 16 to Waymo’s Offer of Proof	Entire document
Exhibit 17 to Waymo’s Offer of	Entire document

Proof	
Exhibit 18 to Waymo's Offer of Proof	Entire document
Exhibit 19 to Waymo's Offer of Proof	Entire document

IT IS SO ORDERED.

Dated: _____, 2018

HON. WILLIAM ALSUP
United States District Court Judge

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

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5 johnneukom@quinnemanuel.com

Lindsay Cooper (Bar No. 254886)

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16 OTTOMOTTO LLC; OTTO TRUCKING
LLC,

17 Defendants.

CASE NO. 3:17-cv-00939-WHA

**DECLARATION OF LINDSAY COOPER
IN SUPPORT OF PLAINTIFF WAYMO
LLC'S ADMINISTRATIVE MOTION TO
FILE UNDER SEAL ITS OFFER OF
PROOF REGARDING ADMISSIBILITY
OF CERTAIN MARKET AND
FINANCIAL INFORMATION**

I, Lindsay Cooper, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate at the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for the Plaintiff Waymo LLC (“Waymo”). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Waymo’s Administrative Motion to File Under Seal its Offer of Proof Regarding Admissibility of Certain Market and Financial Information. (“Waymo’s Administrative Motion”). Waymo’s Administrative Motion seeks an order sealing the following materials:

Document	Portions to Be Filed Under Seal	Designating Party
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	Highlighted in green	Waymo
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Exhibit 18 to Waymo's Offer of Proof	Entire document	Defendants
Exhibit 19 to Waymo's Offer of Proof	Entire document	Defendants

3. Waymo's Offer of Proof and attached exhibits contain information that Defendants have designated as confidential and/or highly confidential.

4. Portions of Waymo's Offer of Proof and attached exhibits contain, discuss, or refer to Waymo's confidential business information, including internal Waymo documents describing its market analyses, plans, forecasts, and financial information. Specifically, portions of Waymo's Offer of Proof and attached exhibits describe documents that Waymo has produced in this litigation, designated as HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY under the protective order, that refer to Waymo's future plans with respect to commercializing its business, including launch dates and launch locations; Waymo's internal strategic analysis of the TaaS market and how to enter it; Waymo's analysis of the potential future revenue and profits associated with various business plans; and strategic ways to deal with competitors in the market, including Uber and others. Public disclosure of this information to Waymo's competitors would harm Waymo by giving its competitors access to Waymo's highly confidential internal business thinking. If such information were made public, I understand that Waymo's competitive standing would be significantly harmed. Waymo's request to seal is narrowly tailored to only the confidential information.

1
2 I declare under penalty of perjury under the laws of the State of California that the foregoing is
3 true and correct, and that this declaration was executed in San Francisco, California, on January 26,
4 2018.

5 By /s/ Lindsay Cooper
6 Lindsay Cooper
7 Attorneys for WAYMO LLC

8 **SIGNATURE ATTESTATION**

9 Pursuant to Local Rule 5-1(i)(3), I attest under penalty of perjury that concurrence in the
10 filing of this document has been obtained from Lindsay Cooper.

11 /s/ Charles K. Verhoeven
12 Charles K. Verhoeven
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2 charlesverhoeven@quinnemanuel.com

David A. Perlson (Bar No. 209502)

3 davidperlson@quinnemanuel.com

Melissa Baily (Bar No. 237649)

4 melissabaily@quinnemanuel.com

Jordan Jaffe (Bar No. 254886)

5 jordanjaffe@quinnemanuel.com

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6 San Francisco, California 94111-4788

Telephone: (415) 875-6600

7 Facsimile: (415) 875-6700

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10 NORTHERN DISTRICT OF CALIFORNIA

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17 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S OFFER OF
PROOF REGARDING ADMISSIBILITY
OF CERTAIN MARKET AND
FINANCIAL INFORMATION**

**PUBLIC REDACTED VERSION OF
DOCUMENT SOUGHT TO BE SEALED**

Trial Date: December 4, 2017

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1 **I. INTRODUCTION**

2 Waymo submits this offer of proof in advance of (i) eliciting testimony from Uber and
3 Waymo trial witnesses regarding the perceived size of the potential market for autonomous
4 vehicles at the time of the misappropriation, and (ii) introducing into evidence the revenue and
5 profit forecasts contained in Waymo’s baseline profit and loss statement.¹

6 Evidence of the perceived size of the potential market for autonomous vehicles is relevant
7 to this case by Uber’s and Ottomotto’s own admission. For purposes of this case, Uber and
8 Ottomotto (collectively, “Uber”) retained a Ph.D. economist (Dr. Michael Jacobs) as an expert on
9 mergers and acquisitions (M&A) issues to testify about Uber’s acquisition of Ottomotto. In setting
10 out his opinions, Dr. Jacobs recounted various “[f]orecasts of the autonomous vehicle business,”
11 including a May 2014 estimate of \$87 billion by 2030, an April 2015 estimate of \$102 billion by
12 2030, a January 2016 estimate of \$1.5 trillion by 2040, a July 2016 estimate of \$41.7 billion by
13 2025, and a March 2017 estimate of \$22 to \$26 billion by 2025. (Ex. 1 [Jacobs Report], ¶ 27.) He
14 concluded that “the perceived size of the potential market has grown over time” and that this “has
15 several implications for transaction economics in the 2016 time frame.” (*Id.* ¶¶ 27, 29.) He went
16 on to explain that these “substantial forecasts” – along with the fact that “strategic
17 players...needed to have development done” and the fact that there was “a small group of
18 experienced engineers” – “created the economics that we see in the transactions in the
19 [autonomous vehicle] marketplace.” (*Id.* ¶ 29.) Uber’s expert says that these “economics” explain
20 why Uber placed such a high value on Ottomotto – which had been in existence for less than two
21 months when the term sheet was signed) – in early 2016. The very same economics explain why
22 Uber would place a high value on a trade secret license in a hypothetical negotiation with Waymo
23 in the very same time frame. This is especially true where, as here, Uber executives were
24 convinced that Uber could not survive if it was not among the first to commercialize self-driving
25

26 ¹ Waymo intends to introduce at trial some portions of its baseline P&L statement –
27 including, for example, those portions that reflect Waymo’s launch and scaling plans – through
28 normal procedures. The instant offer of proof is provided solely with respect to the admission of
Waymo’s future revenue and profit forecasts, which are also contained in the same baseline P&L.
(Ex. 19.)

1 technology in TaaS (transportation as a service) and where, as here, the trade secrets to be licensed
2 relate to LiDAR technology, which Uber believed to be the [REDACTED] of its own lagging
3 development efforts.

4 The revenue and profit forecasts contained in Waymo's baseline profit and loss statement
5 are also relevant to the hypothetical negotiation. In his analysis of "transaction economics in the
6 2016 time frame" to justify the high value Uber placed on Ottomotto (*id.* ¶ 29), Uber's and
7 Ottomotto's own expert thought it important that "Morgan Stanley has estimated that Waymo is
8 currently worth \$70 billion just based on its intention to use its driverless cars to obtain a fraction
9 of the ride marketplace" (*id.* ¶ 27). Though Waymo does not seek to rely on Morgan Stanley's
10 valuation, it should be permitted to rely on its own forecasts [REDACTED] (Ex.
11 19 [TX-4980]) as evidence of the "economics" that would similarly impact a negotiation between
12 Uber and Waymo for a trade secret license. Like Uber, Waymo viewed the autonomous vehicle
13 market as "winner take all" or "winner take most." (Ex. 2 [TX-1031]; Ex. 3 [TX-1033].) Thus all
14 or most of Waymo's forecasted profits were viewed as contingent on Waymo using its technical
15 lead to become the first and best at offering self-driving TaaS. Waymo's projections – and the
16 effect a shrinking technical lead would have on those projections – would have been front and
17 center for Waymo at any hypothetical negotiation with a competitor like Uber for a license to
18 Waymo trade secrets. And again, this is especially true where, as here, the trade secrets to be
19 licensed relate to the very area of technology that Uber believed to be the [REDACTED] of its
20 development efforts and thus most likely to impact Uber's overall self-driving timeline.

21 **II. OFFER OF PROOF**

22 By 2016, both Uber and Waymo believed that ride-sharing fleets would become [REDACTED]
23 [REDACTED] in our lifetimes, making the commercialization of self-driving technology a
24 massive market opportunity. Both Uber and Waymo also believed that time-to-market was of
25 critical importance because the market opportunity was likely to be winner-take-all or winner-
26 take-most. Waymo believed that its ability to capitalize on this opportunity hinged in large part on
27 its technical lead and its resulting ability to enter the market first and as long before the next
28 entrant as possible. Indeed, this drove Waymo's projections of market share and revenues.

1 Similarly, Uber believed that Waymo's technical lead was an existential threat and that it had to
2 close the gap with Waymo or risk losing its large share of the TaaS market. For the same reasons
3 that Uber has contended that the huge amount of money in play – as evidenced by various
4 valuations of overall market potential and of Waymo – explains why Uber highly valued a two-
5 month old company like Ottomotto, the same evidence would have an effect on a negotiation
6 between competitors for a license to LiDAR-related trade secrets.

7 **A. At the time of the misappropriation, Waymo believed that the first player to**
8 **commercialize self-driving cars was likely to capture all or most of the TaaS**
9 **market.**

10 1) The evidence at trial will show that Waymo was the first to heavily invest in the
11 development of self-driving technology and that Waymo was the first to understand that the
12 technology could be safely commercialized in the near term rather than decades from now. And,
13 from a business perspective, Waymo has always understood that its technical lead would be key to
14 its success in whatever market(s) it chose to enter.

15 2) By 2016, Waymo had decided that its business strategy should prioritize
16 commercialization of self-driving technology for TaaS (over other applications like trucking or
17 personal car ownership). Waymo understood the potential size of the autonomous TaaS market.
18 And Waymo understood that its technical lead would drive its success in that market, especially
19 vis-à-vis established manned TaaS players like Uber.

20 3) Waymo will introduce evidence to show that, by 2016, it was operating under the
21 premise that the first company to achieve self-driving TaaS at scale was likely to win a majority of
22 the market in any given region. (Ex. 2 [TX-1031] (noting that a “single player (in any region) will
23 likely earn majority of profits in TaaS”); Ex. 3 [TX-1033] (discussing assumption that AV-based
24 TaaS market is “most likely a winner take most”).

25 4) The evidence at trial will also show that, as of 2016, Waymo believed that it had a
26 two to five year technical advantage over its self-driving competitors. Waymo believed this lead
27 would allow Waymo to launch and scale a self-driving TaaS service before another competitor
28 with an existing TaaS service (like Uber) could develop self-driving technology and deploy it
within its existing network. (*See* Ex. 3 [TX-1033] (discussing Waymo's technology lead and

1 various strategy implications depending on the size of Waymo’s lead).) Indeed, the evidence will
 2 show that Waymo’s emphasis on obtaining as much of a lead as possible – while ensuring safety
 3 and operating within other constraints – had come to inform nearly every aspect of its business
 4 plan by 2016.

5 **B. At the time of the misappropriation, Uber also believed that it needed to be**
 6 **among the first to commercialize self-driving technology and that it needed to**
accelerate its development efforts.

7 5) The evidence at trial will show that, by 2016, Travis Kalanick, Uber’s then-CEO,
 8 had become convinced that being among the first to commercialize self-driving for TaaS was
 9 “existential” for Uber. Mr. Kalanick has stated that: “[REDACTED]
 10 [REDACTED].” (Ex. 4 [TX-387].) Mr. Kalanick has stated that
 11 succeeding in self-driving is “[REDACTED]” and “[REDACTED]
 12 [REDACTED]” (Ex. 5 [TX-5472].)

13 6) The evidence at trial will show that this view permeated Uber. For example, in an
 14 email regarding “[REDACTED]” and noting a “[REDACTED]” Jeff Holden –
 15 Uber’s Chief Product Officer – stated: “[REDACTED]
 16 (Ex. 6 [TX-4481].) John Bares, former director of Uber’s ATG program in Pittsburgh, has also
 17 agreed that “[REDACTED]” (Ex. 7 [Bares 6/16/27
 18 Depo. Tr.] at 122:14-16.)

19 7) The evidence at trial will show that Uber understood it was lagging behind Waymo
 20 in the development of self-driving technology and that it needed to close the gap. Mr. Kalanick
 21 has said: “[REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]” (Ex. 8 [TX-291].) Cameron Poetzsch, Uber’s Vice President of
 25 Corporate Development, has explained: “[REDACTED]
 26 [REDACTED]
 27 [REDACTED]” (Ex. 9
 28 [Poetzsch 8/11/17 Depo. Tr.] at 464:16-20.) Mr. Poetzsch has testified: “[REDACTED]

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(*Id.* at 465:5-14.)

C. Both Waymo And Uber Perceived That They Were Competing For All Or Most Of A Significant Market And That Perception Influenced Their Behavior

8) Uber and Ottomotto have offered an expert opinion regarding the perceived growth of the self-driving industry in order to justify Uber’s high valuation of Ottomotto, a company that existed for less than two months at the time Uber was assessing its value and negotiating to acquire it. Their M&A expert, Dr. Michael Jacobs, opined that “dramatic growth is possible over the next ten to fifteen years” in the autonomous vehicle industry. (Ex. 1 [Jacobs Report], ¶ 27.) He recounted various “[f]orecasts of the autonomous vehicle business,” enumerating a May 2014 estimate of \$87 billion by 2030, an April 2015 estimate of \$102 billion by 2030, a January 2016 estimate of \$1.5 trillion by 2040, a July 2016 estimate of \$41.7 billion by 2025, and a March 2017 estimate of \$22 to \$26 billion by 2025. (*Id.* ¶ 27.)

9) According to Dr. Jacobs, “the perceived size of the potential market has grown over time,” which motivated Uber to avoid being “left out” and to place great value on the opportunity to acquire Ottomotto. (*Id.* ¶ 29.)

10) The evidence at trial will show that the perceived size of the market opportunity was an important consideration for Uber, and one that animated Uber’s conduct in many respects, including vis-à-vis Waymo, its most significant rival in self-driving. Indeed, the evidence will show that the perceived size of the market opportunity – combined with the common belief that the market would play out as “winner take all” or “winner take most” – explains why Mr. Kalanick was intent on accelerating Uber’s development of self-driving technology at all costs and why at least some at Uber valued the acceleration of its development timeline at many millions of dollars per day. (Ex. 10 [TX-299]; Ex. 11 [McClendon 8/1/17 Depo. Tr.] at 179:17-180:17 (explaining that Kalanick

)).)

11) The evidence at trial will show that Waymo also acted in light of the large market

1 opportunity. Waymo's current Plan of Record document discusses the need to [REDACTED]
 2 [REDACTED] and [REDACTED]" (Ex. 12 [TX-1147], at 5). This
 3 strategy is in line with Waymo's belief that the first company to achieve self-driving TaaS at scale
 4 was likely to win a majority of the market in any given region. (Ex. 2 [TX-1031] (noting that a
 5 "single player (in any region) will likely earn majority of profits in TaaS"); Ex. 3 [TX-1033]
 6 (discussing assumption that AV-based TaaS market is "most likely a winner take most").

7 **D. Uber understood that accelerating its LiDAR development would accelerate its**
 8 **overall self-driving timeline.**

9 12) By 2016, Uber recognized that LiDAR technology specifically was a key driver of
 10 its ability to succeed with self-driving technology. (Ex. 13 [TX-910] [REDACTED]
 11 [REDACTED]); Ex. 14 [TX-171] [REDACTED]
 12 [REDACTED] Ex. 15 [TX-678] [REDACTED]
 13 (Ex. 16 [TX-367] (Kalanick: [REDACTED]
 14 [REDACTED]).)

15 13) The evidence at trial will show that lasers were the "longest pole" with respect to
 16 Uber's own self-driving technology development efforts. (Ex. 16 [TX-367] (discussing Mr.
 17 Levandowski, [REDACTED] *id.*
 18 (discussing the [REDACTED] As Mr. Kalanick has explained, [REDACTED] refers to the
 19 hardest problem Uber had to solve: [REDACTED]
 20 [REDACTED]" (Ex. 17 [Kalanick 7/27/17 Depo. Tr.] at 198:1-199:2.) Indeed,
 21 the evidence will show that Uber believed that [REDACTED]
 22 [REDACTED] (Ex. 18 [TX-
 23 170] (discussing Levandowski's potential value-add, John Bares wrote, [REDACTED]
 24 [REDACTED]
 25 [REDACTED])

26 **III. THE PROFFERED TESTIMONY AND EVIDENCE SHOULD BE ADMITTED**

27 **A. Evidence Of The Perceived Size Of The Market Opportunity For Self-Driving**
 28 **Is Admissible To Prove Uber's Motive For Misappropriating Waymo's Trade**

1 **Secrets**

2 As demonstrated above, by 2016, Uber had come to understand (i) the size of the potential
3 market opportunity associated with self-driving technology and (ii) that, to capture the "winner
4 take all" or "winner take most" self-driving TaaS market, it needed to narrow the technical lead
5 that Waymo had over Uber. This dual understanding motivated Uber's [REDACTED] when it
6 came to self-driving, including its misappropriation of Waymo's secrets. (Ex. 11 [McClendon
7 8/1/17 Depo. Tr.] at 179:17-180:17.) Waymo should be permitted to explain to the jury
8 exactly what Uber understood to be on the line at the time of the misappropriation. *See LinkCo,*
9 *Inc. v. Fujitsu*, 232 F. Supp. 2d 182 n.9 (S.D.N.Y. 2002) (admitting sales projections "for the
10 limited purpose of explaining Fujitsu's motive to engage in the alleged [trade secret
11 misappropriation]"). For this reason alone, Waymo should be able to elicit testimony regarding
12 the perceived size of the market opportunity for self-driving.

13 **B. Evidence Of The Perceived Size Of The Market Opportunity For Self-Driving**
14 **And Evidence Of Waymo's Revenue And Profit Forecasts Are Admissible To**
15 **Establish Trade Secret Status**

16 In order to prevail on its trade secret misappropriation claim, Waymo must establish that
17 its asserted trade secrets derive actual or potential independent economic value from not being
18 generally known. *MAI Sys. Corp. v. Peak Comp. Inc.*, 991 F.2d 511, 520-21 (9th Cir. 1993). The
19 "long-term lucrative potential" of a field is circumstantial evidence that "incremental
20 advancements" in that field derive economic value from not being known. *Altavion, Inc. v.*
21 *Konica Minolta Sys. Lab. Inc.*, 226 Cal. App. 4th 26, 65 (2014) (upholding a finding of substantial
22 economic value based on evidence that "if successfully implemented, DST could be very lucrative
23 because of potential applications in many different industries" and testimony that "the technology
24 had the potential to earn vast sums on check scanning in the banking industry"). Here, Waymo's
25 trade secrets are valuable in large part because of their specific development in the context of self-
26 driving technology. Waymo should be permitted to establish the "long-term lucrative potential"
27 of that technology in connection with meeting its burden of proving that its confidential technical
28 information is properly afforded trade secret status. For this reason as well, testimony regarding
the general perception of the market opportunity for self-driving and evidence of Waymo's

1 specific assessment of that market opportunity (in the form of its projections) should be admitted
2 at trial.

3 **C. Evidence Of The Perceived Size Of The Market Opportunity For Self-Driving**
4 **And Evidence Of Waymo's Revenue And Profit Forecasts Are Admissible As**
5 **Factors That Would Significantly Impact The Hypothetical Negotiation**

6 As demonstrated above, Uber's own view is that both the perceived size of the market
7 opportunity for self-driving and the valuation of Waymo as a self-driving enterprise inform
8 the "transaction economics" at play in the self-driving industry in 2016. Uber makes use of this
9 information to explain why it placed such a high value on the acquisition of Ottomotto. Waymo
10 should be entitled to rely on the same information to explain why Uber would be willing to pay a
11 high royalty for the acquisition of trade secrets from Waymo in the parties' hypothetical
12 negotiation.

13 Indeed, as outlined above, the evidence at trial will show that both Uber and Waymo
14 believed that the market opportunity for self-driving TaaS was on the order of at least many tens
15 of billions of dollars; that the market would be "winner take all" or "winner take most"; that time
16 to market would be critical (if not determinative of winners and losers); and that Waymo had a
17 two to five year technology lead on Uber, while Uber already had an established TaaS
18 business. Regardless of starting point (Uber's valuation of accelerated development, Uber's
19 valuation of Ottomotto, Waymo's research and development costs, etc.), this specific constellation
20 of factors would drive up the royalty that Uber would pay (and Waymo would demand) for a
21 license to Waymo trade secrets related to the very technological area (LiDAR) that Uber
22 considered to be the [REDACTED] of its own development efforts. The evidence at trial will
23 show that the size of this winner-take-all (or most) market opportunity was front and center every
24 step of the way for Uber, and it would have been front and center for both Uber and
25 Waymo during their hypothetical negotiation. Accordingly, Waymo should be permitted to elicit
26 testimony regarding the parties' perceptions of the market opportunity and should be permitted to
27 introduce documentary evidence of its projected revenues and forecasts.

28 **IV. CONCLUSION**

For the foregoing reasons, the Court should allow Waymo to (i) elicit testimony from Uber

1 and Waymo trial witnesses regarding the perceived size of the potential market for autonomous
2 vehicles at the time of the misappropriation, and (ii) introduce into evidence the revenue and profit
3 forecasts contained in Waymo's baseline profit and loss statement.

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5 DATED: January 26, 2018

QUINN EMANUEL URQUHART & SULLIVAN,
LLP

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7 By /s/ Charles K. Verhoeven

Charles K. Verhoeven
Attorneys for WAYMO LLC